State Employees' Retirement System of Illinois

Invitation for Bid

Nutanix™ Hardware, Licenses, and Services for Upgrades to System Data Centers (System Reference # 21090)

Issued on May 13, 2021

Bid Opening Date: June 1, 2021 at 2:00 p.m. CST

Table of Contents

I. INTRODUCTION……..……..... 1

II. SUMMARY DESCRIPTION OF SYSTEM …..... 3

III. INSTRUCTIONS AND GENERAL INFORMATION…..... 4

BID

OFFER TO THE SYSTEM..... A-1

EXCEPTIONS TO TERMS AND CONDITIONS..... B-1

CONTRACT……..……..... C-1

I. INTRODUCTION

The State Employees' Retirement System of Illinois ("SERS" or "System") is requesting bids from responsible and responsive bidders to provide certain Nutanix™ products and services to upgrade its existing data centers in Springfield, Illinois, and Oak Brook, Illinois. The System currently uses Nutanix™ Hyper-Converged Infrastructure (HCI) in its two data centers and is interested in procuring these additional products and services so that it can better meet the System's information technology needs. The objective of this Invitation for Bid ("IFB') is to solicit bids from responsible and responsive vendors and thereby identify the lowest cost provider of the following Nutanix™ products and services:

A. Nutanix™ Hardware and Associated Software

Product Code	Quantity	Last Date for Delivery
NX-8235-G7-4215R-CM	4	June 30, 2021
C-MEM-64GB-3200-CM	96	June 30, 2021
C-HDD-NONE-CM	4	June 30, 2021
C-SSD-3.84TB-A5-A-CM	48	June 30, 2021
C-NIC-10GSFP2-A-CM	8	June 30, 2021

B. Nutanix™ Licenses

Product Code	Quantity	Term (Months)	Last Date for Delivery
SW-AOS-PRO-PRD-3YR*	1	36	June 30, 2021
L-CORES-PRO-PRD-3YR*	128	36	June 30, 2021
L-FLASHTiB-PRO-PRD-3YR*	168	36	June 30, 2021
LIC-PRS-PRO-3YR-1	8	36	June 30, 2021
LIC-FLOW-3YR-1	8	36	June 30, 2021

(*Includes Production Software Support Service for the Specified Term)

C. Nutanix™ Support Services

Product Code	Quantity	Term (Months)
S-HW-PRD	8	36
Support-Term	36	36

D. Nutanix™ Training Services

Product Code	Quantity	Term (Months)
FLEX-CST-CR	150	12

E. Nutanix™ Installation Services

Product Code	Quantity	Last Date for Delivery
CNS-INF-A-SVC-DEP-STR	8	July 31, 2021

(Installation: United States; Hypervisor: AHV; Level of Service: Starter Service)

If you are interested in submitting a bid in response to this IFB, please read the entire solicitation package and submit a bid for evaluation in accordance with the instructions provided. All forms described and signature areas contained in the solicitation package should be completed in full and submitted along with the price proposal which will constitute the Bid. Do not submit Sections I through III of this IFB with bids. Bidders should keep those portions of the IFB for future reference.

Forms A and Forms B are available to be downloaded at: https://www2.illinois.gov/cpo/general/Pages/SolicitationandContractTemplates.aspx. These forms are a material part of this solicitation, and they must be returned, when applicable, with a Bidder's Bid.

SERS is committed to increasing racial, ethnic, and gender diversity in all aspects of its utilization of vendors to provide goods and services to the System, to the greatest extent feasible, and within the bounds of financial and fiduciary prudence. To that end, the System strongly encourages minority-owned businesses, women-owned businesses, businesses owned by persons with a disability, and veteran-owned businesses to submit bids in response to this IFB.

A vendor's preparation and submittal of a bid or subsequent participation in contract negotiations creates no obligation on the System to award a contract or to pay any associated costs. All bids and related materials will be retained by the System and will be subject to disclosure in accordance with the Illinois Freedom of Information Act.

Bids that do not adhere to form and content of the Invitation for Bid requirements may not be considered.

II. SUMMARY DESCRIPTION OF SYSTEM

SERS is a public employee retirement system that administers a governmental defined benefit plan through which State employees are provided retirement, disability, death, and survivor benefits. The retirement system is administered as a qualified plan under Section 401(a) of the Internal Revenue Code, and its investments and benefit programs are managed in accordance with the requirements of the Illinois Pension Code (40 ILCS 5/).

Administration of the System is statutorily assigned to a thirteen-member board of trustees, which consists of the State Comptroller, six persons appointed by the Governor with the advice and consent of the Senate, four elected active SERS participants who have at least 8 years of creditable service in the System, and two elected annuitants of the System. However, the day-to-day operations of the System are overseen by its Executive Secretary and are delegated to a staff of approximately 97 employees located at the System's main administrative office in Springfield, Illinois, and its satellite office in Chicago, Illinois.

III. INSTRUCTIONS AND GENERAL INFORMATION

A.1 **HOW TO ENTER INFORMATION:** On the following pages, type information in the text form fields provided. Text form fields are indicated by the instruction "Click here to enter text." in red font. If the information requested does not apply to the Bidder's situation, then enter "N/A" into the text form field. Please enter the requested information or N/A into every red text field. Please note that the CONTRACT section of this solicitation may be used as the contract between the System and the awarded vendor. Forms A (or Forms B), as well as the certifications and disclosures referenced in those Forms, will become a material part of the contract.

A.2 **PUBLISHED PROCUREMENT INFORMATION:** The System publishes procurement information, including solicitations, awards, and amendments, on its procurement website, which is available at: https://www.srs.illinois.gov/openrfp.htm. Procurement information may not be available in any other forum or location. Bidder is responsible for monitoring the System's website. The System will not be held responsible if Bidder fails to receive information posted on the System's website.

A.3 **INFORMATION CONTACT:** The Director of Administrative Services for the State Retirement Systems, Mr. Robert Cooper, is the single point of contact for this solicitation. Unless otherwise directed, Bidders should communicate about this solicitation only with Mr. Cooper. Neither the State nor System shall be held responsible for information provided by or to any other person.

Suspected errors should be immediately reported to Mr. Cooper at robert.cooper@srs.illinois.gov. Do not discuss, directly or indirectly, the solicitation or any bid with any officer or employee of the State, other than Mr. Cooper.

A.4 **BIDDER QUESTIONS AND AGENCY RESPONSE:** All questions pertaining to this solicitation must also be submitted in writing to the Information Contact, Mr. Cooper, at robert.cooper@srs.illinois.gov, by no later than May 19, 2021. Questions received and System responses may be posted as an Amendment to the original solicitation on the System's website; only these posted answers to questions shall be binding on the System. Bidders are responsible for monitoring the System's website.

A.5 **BID DUE DATE, TIME, AND ADDRESS FOR SUBMISSION OF BIDS:** Each solicitation contains the Bid Due Date and Time appearing as the "Bid Opening Date:" on the cover of this IFB. Bids will be opened at the "Submit/Deliver Offers To" address provided below on the Bid Opening Date. Late bids shall be deemed non-responsive and will not be considered.

A.5.1. Bid Firm Time: Vendor's Bid must remain firm for 7 days from opening.

A.5.2. Submit/Deliver Paper Bids To: Label (outside of envelopes/containers):

State Employees' Retirement System	**"Sealed Bid – Do Not Open"**
Attn: Mr. Robert Cooper	Project Title: Nutanix™ Hardware, Licenses, and Services
2101 S. Veterans Parkway	Due Date & Time: June 1, 2021 at 2:00 p.m. CST
Springfield, IL 62704	*Vendor Name*
	Vendor City, State and Zip

A.6 ORGANIZATION REQUIRED: Please follow these instructions carefully. Separately seal and label each packet.

A.6.1. Packet 1 shall contain the "Contract" section and, if applicable, a redacted copy of that section. See pages C-1 through C-19.

A.6.2. Packet 2 shall contain the Offer. See pages A-1 through A-4.

If applicable, the packet shall also contain "Exceptions to Solicitation Contract Terms and Conditions" See page B-1.

A.6.2.1. Exceptions must be provided on the "Exceptions to Solicitation Contract Terms and Conditions" form on page B-1 or must be in a substantially similar format. The System discourages taking exceptions. State law shall not be circumvented by the exception process. Exceptions may result in rejection of the Bid.

A.6.2.2. Additional Bidder Provisions may be stated on the "Exceptions to Solicitation Contract Terms and Conditions" form on page B-1, but should not include exceptions to System specifications, terms and conditions, or any other part of this solicitation. This is supplemental information that supports a Bidder's position or, for example, a Bidder's licensing agreement.

A.6.3. Packet 3 shall contain either Forms A or Forms B. Forms A contains eight forms and shall be returned by Bidders that do <u>not</u> have an active registration in the Illinois Procurement Gateway (IPG).

Forms B consists of two pages and a one-page Taxpayer Identification Number. Forms B is returned only by Bidders that <u>have</u> a valid IPG registration number with expiration date and elect to not use the forms found in Forms A.

A.7 SUBMISSION OF BIDS: Bids shall be submitted in paper format.

A.7.1. To aid in the organization of the Bid submitted in paper format, submit it in separately sealed packets as indicated below and clearly labeled with the Invitation for Bid title, the packet number, the Bidder's name, and the wording**: "Sealed Bid – Do Not Open."** The separately sealed packets may be submitted together in one mailing/shipping box or may be submitted separately in individual/shipping boxes. You may put the entire Bid on one CD or USB flash drive.

Subject Matter	**# of Originals**	**# of Hard Copies**	**# of CDs or USB flash drives**
PACKET 1: "Contract" and, if applicable, a redacted copy of "Contract"	1	1	1
PACKET 2: "Offer" and "Exceptions to Terms and Conditions"	1	1	1
PACKET 3: FORMS A <u>or</u> FORMS B	1	1	1

A.8 MINORITY CONTRACTOR INITIATIVE: The State requires a fee of $15 to cover expenses related to the administration of the Minority Contractor Opportunity Initiative. Any bidder awarded a contract of $1,000 or more under Section 20-10, 20-15, 20-25 or 20-30 of the Illinois Procurement Code (30 ILCS 500) is required to pay a fee of $15. The Comptroller shall deduct the fee from the first check issued to the Vendor under the contract and deposit the fee in the Comptroller's Administrative Fund. 15 ILCS 405/23.9.

A.9 FEDERAL FUNDS: The resulting contract may be partially or totally funded with Federal funds. Upon notice of intent to award, the percentage of the goods and/or services involved which are Federally funded and the dollar amount of such Federal funds will be disclosed.

A.10 EMPLOYMENT TAX CREDIT: Bidders who hire qualified veterans and certain ex-offenders may be eligible for tax credits. 30 ILCS 500/45-67 and 45-70. Please contact the Illinois Department of Revenue (217-524-4772) for information about tax credits.

A.11 GOVERNING LAW AND FORUM: Illinois law and System policies govern this solicitation and any resulting contract. Bidder must bring any action relating to this solicitation

in the appropriate forum in Illinois. This document contains statutory references designated with "ILCS." Bidder may view the full text at *http://www.ilga.gov/legislation/ilcs/ilcs.asp*.

A.12 PUBLIC RECORDS AND REQUESTS FOR CONFIDENTIAL TREATMENT: Upon receipt by the System, bids become the property of the System. All bids will be open to the public under the Illinois Freedom of Information Act (FOIA) (5 ILCS 140) and other applicable laws and rules, unless Bidder requests in its Bid that the System treat certain information as confidential. A request for confidential treatment will not supersede the System's legal obligations under FOIA. The System will not honor requests to keep entire Bids confidential. Bidders must show the specific grounds in FOIA or other law or rule that support confidential treatment. Regardless, the System will disclose the successful Bidder's name, the substance of the Bid, and the price.

If Bidder requests confidential treatment, Bidder must submit an additional copy of the Bid with proposed confidential information redacted. This redacted copy must tell the general nature of the material removed, and it shall retain as much of the Bid as possible. In a separate attachment, Bidder shall supply a listing of the provisions identified by section number for which it seeks confidential treatment and identify the statutory basis or bases under Illinois law, including a detailed justification for exempting the information from public disclosure. Bidder must label the attachment as "Redacted" and return it in Packet 1.

Bidder will hold harmless and indemnify the System and its board of trustees, as well as any employee of the State or System, for all costs and damages associated with defending Bidder's request for confidential treatment. Bidder agrees that the System may copy the Bid to facilitate evaluation, or to respond to requests for public records. Bidder warrants that such copying will not violate the rights of any third party.

A.13 RESERVATIONS: Bidder must read and understand the solicitation and tailor the Bid and all activities to ensure compliance with System requirements and policies and applicable State and federal laws. The System reserves the right to amend the solicitation, reject any or all bids, award by item, group of items, or grand total, and waive minor defects. The System may request a clarification, inspect Bidder's premises, interview staff, request a presentation, or otherwise verify the contents of the Bid, including information about subcontractors and suppliers. The System will make all decisions on compliance, evaluation, and terms and conditions, and shall make decisions in the best interests of the System and in accordance with its fiduciary obligations, System policies, and applicable State and federal statutes and regulations. This competitive process may require that the Bidder provide additional information or otherwise cooperate with the System. If a bidder does not comply with requests for information or cooperate, the System may reject the bid as non-responsive to the solicitation. Submitting a bid does not entitle the Bidder to an award or a contract. Posting a vendor's name on the System's website does not entitle the vendor to a contract. The System is not responsible for and will not pay any costs associated with the preparation and submission of any bid. Awarded vendor(s) shall not commence, and will not be paid for, any billable work undertaken prior to the date all parties execute the contract, unless approved by the Executive Secretary of the System.

A.14 AWARD: The System is not obligated to award a contract pursuant to this solicitation. If the System issues an award, the award will be made to the responsive and responsible bidder who submits the lowest price bid. The System will post a notice on its procurement website identifying the apparent low-cost bidder. The System may accept or reject a bidder's bid as submitted, or may require contract negotiations. If negotiations do not result in an acceptable agreement, the System may reject the bidder's bid and begin negotiations with another bidder.

A.15 INVOICING ADDRESS: The awarded Vendor may invoice the System for a product or service to be provided under this contract on or after the date the product or service is provided to the System or on July 31, 2021, in the case of services to be provided under the contract on or after July 31, 2021. The contract contains the "Bill-to Address:" where invoices should be sent. Vendor shall not bill for any taxes unless accompanied by proof the System is subject to the tax. If necessary, Vendor may request the System's Illinois tax exemption number and Federal tax exemption information.

A.15.1 EVALUATION PROCESS: The System evaluates three categories of information: Responsibility, Responsiveness, and Price. The System will consider the information provided and the quality of that information when evaluating the bidder's bid. If the System finds a failure or deficiency, the System may reject the bid or reflect the failure or deficiency in the evaluation.

A.15.1.1. **RESPONSIVENESS**: A responsive bidder is one who submits a bid that conforms in all material respects to the Invitation for Bid and includes **all required** forms. Required forms may include, but may not be limited to:

A.15.1.2. Subcontractor Disclosure: If the Bid includes any subcontractors, then Bidder shall provide the names and addresses of subcontractors in the contract.

A.15.1.3. If completing Forms B, then responsiveness may include without limitation:

- Active Illinois Vendor Registration # with expiration date
- Disclosure of lobbyists for Bidder and parent entity(ies)
- Disclosure of pending and current contracts
- Certifications timely to this solicitation

A.15.1.4. If completing Forms A, required forms may include and may not be limited to:

- Business and Directory Information: Bidder should complete and return the "Business and Directory Information" form in Forms A , Part 1.

- Illinois Department of Human Rights Public Contracts Number: Bidder shall complete and return the "IDHR Public Contracts Number" form in Forms A , Part 2.

- Authorized to Transact Business or Conduct Affairs in Illinois: A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity prior to submitting a bid and authorized to transact business or conduct affairs in Illinois prior to execution of the contract. For more information, see "Authorized to Transact Business or Conduct Affairs in Illinois" form in Forms A, Part 3.

- Standard Certifications: Offeror shall complete and return the "Standard Certifications" form in Forms A, Part 4.

- State Board of Elections Registration: Vendor or Bidder may be prohibited from making political contributions and be required to register with the State Board of Elections. For more information, see "State Board of Elections" form in Forms A, Part 5.

- Disclosure of Business Operations with Iran: Offeror should complete and return the "Disclosure of Business Operations with Iran" form in Forms A, Part 6.

- Financial Disclosures and Conflicts of Interest: Bidder shall complete and return the "Financial Disclosures and Conflicts of Interest" form in Forms A, Part 7, or in the Illinois Procurement Gateway.

- Taxpayer Identification Number: Bidder shall complete and return the "Taxpayer Identification" form in Forms A, Part 8.

A.15.1.5. The System will determine whether the Bid meets the stated requirements. Minor differences or deviations that have negligible impact on the price or suitability of the supply or service to meet the System's needs may be accepted or corrections allowed. If no bidder meets a particular requirement, the System may waive that requirement.

A.15.1.6. When the specification calls for a specific brand name, the brand name product alone is acceptable.

A.15.1.7. The System will determine whether Bids complied with the instructions for submitting bids. Except for late submissions, and other requirements that by law must be part of the submission, the System

may require that a bidder correct deficiencies as a condition of further evaluation.

A.15.2. RESPONSIBILITY: A responsible Bidder is one who has the capability in all respects to perform fully the contract requirements and who has the integrity and reliability that will assure good faith performance. The System determines whether the Bidder is a "responsible" bidder (i.e., a bidder with whom the System can or should do business). For example, the System may consider the following:

A.15.2.1. A "prohibited bidder" includes any person assisting an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request for information, or providing similar assistance unless such assistance was part of a publicly issued opportunity to review drafts of all or part of these documents. For purposes of this section, an employee of the State of Illinois means one who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract. No person or business shall submit specifications to the System unless requested to do so by an employee of the System. No person or business that contracts with the System to write specifications for a particular procurement need shall submit a bid or proposal or receive a contract for that procurement need.

Nothing herein is intended to prohibit a vendor from bidding or offering to supply developing technology, goods, or services after providing the System with a demonstration of the developing technology, goods, or services; provided the subject of the demonstration to the System represents industry trends and innovation and is not specifically designed to meet the System's needs. Nothing herein is intended to prohibit a person or business from submitting a bid or offer or entering into a contract if the person or business: (i) initiates a communication with an employee to provide general information about products, services, or industry best practices and, if applicable, that communication is documented in accordance with Section 50-39 of the Illinois Procurement Code (30 ILCS 500/) or (ii) responds to a communication initiated by an employee of the System for the purposes of providing information to evaluate new products, trends, services, or technologies (30 ILCS 500/50-10.5).

A.15.2.2. Other factors that the System may evaluate to determine responsibility include, but are not limited to: political contributions, certifications, conflict of interest, financial disclosures, taxpayer identification number, past performance in business or industry, references (including those found outside the offer,) compliance with applicable laws, financial responsibility, insurability, effective equal opportunity compliance, payment of prevailing wages if required by law, capacity to produce or sources of supply, and the ability to provide required

maintenance service or other matters relating to the bidder's ability to deliver in the quality and quantity within the time and price as specified in this solicitation.

A.15.2.3. Awarded bidders must at all times have financial resources sufficient, in the opinion of the System, to ensure performance of the contract and must provide proof upon request. The System may require a performance bond if, in the opinion of the System, it ensures performance of the contract. The System may terminate the contract, consistent with the termination for cause provision of the contract, if the vendor lacks the financial resources to perform under the contract.

A.15.2.4. The System may require that a bidder correct any deficiencies as a condition of further evaluation.

A.15.3. PRICE: The System identifies the lowest priced bidder that meets responsibility and responsiveness requirements. The System ranks bids in order of price when appropriate.

A.16 MEASURING PROGRESS TOWARD SYSTEM'S DIVERSITY GOAL: The System has established an aspirational goal to use businesses owned by minorities, women, and persons with disabilities for not less than the percentage specified in paragraph (10) of Section 1-109.1 of the Illinois Pension Code for all contracts awarded and purchases made by the System. To ensure that it is making progress toward its aspirational goal established under Section 1-109.1, SERS requires all vendors who contract with the System to certify whether they are minority-owned businesses, women-owned businesses, or businesses owned by a person with disability, as those terms are defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/2), which is available online at the following address: https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=003005750K2. *See* "Supplemental Diversity Certification" form in Section 5 of the Contract Section for the required certification to the System. If a vendor will be using a subcontractor, each subcontractor must also complete the "Supplemental Diversity Certification" form. The subcontractor shall complete the form for itself and as if it were the only Vendor (or subcontractor) under the contract. The System will construe subcontractor's "Vendor" certifications as the subcontractor's own certifications (and not certifications by or about the prime vendor).

-END OF INSTRUCTIONS AND GENERAL INFORMATION-

OFFER TO THE SYSTEM

A) PROJECT TITLE AND SYSTEM REFERENCE #: Click here to enter text.

The undersigned authorized representative of the identified Bidder hereby submits this Offer to the State Employees' Retirement System of Illinois ("System" or "SERS") to provide the Nutanix™ products and services specified in System Solicitation Reference # 21090 in full compliance with that solicitation. By completing and signing this form, Bidder makes an Offer to the State Employees' Retirement System of Illinois that the System may accept.

B) OFFER CHECKLIST

Bidder should **use this Form as a final checklist to ensure that all required documents are completed and included** with the Bid. Bidder must mark each blank below as appropriate; mark N/A when a section is not applicable to this solicitation. Bidder understands that failure to meet all requirements is cause for disqualification.

B.1 SOLICITATION AND CONTRACT REVIEW: Bidder has reviewed the Solicitation and Contract, including the System's Supplemental Certification and all other referenced documents and instructions, filled in all relevant blanks, and provided any requested information.

☐ Yes ☐ No

B.2 ADDENDA: Bidder has taken into account any and all addendums to the solicitation in making this Bid.

☐ Yes ☐ No ☐ N/A

B.3 BID SUBMISSION: Bidder has packaged the Bid in a properly labeled container, addressed to the correct location, included the correct number of copies, and allowed enough time for delivery by the due date and time.

☐ Yes ☐ No

B.4 FORMS A or FORMS B: Bidder is properly submitting either Forms A or Forms B, but not both.

☐ Yes ☐ No

B.5 PACKET 1 – CONTRACT

☐ Yes ☐ No

B.5.1. Redacted Copy of Bid, if Requesting Confidential Treatment

☐ Yes ☐ No ☐ N/A

B.6 PACKET 2 – OFFER

☐ Yes ☐ No

B.6.1. Offer

☐ Yes ☐ No

B.6.2. Exceptions to Solicitation Contract Terms and Conditions

☐ Yes ☐ No

B.7 PACKET 3 – FORMS A

☐ Yes ☐ No

B.7.1. Business and Directory Information

☐ Yes ☐ No

B.7.2. Illinois Department of Human Rights Public Contracts Number

☐ Yes ☐ No

B.7.3. Standard Certifications

☐ Yes ☐ No

B.7.4. Disclosure of Business Operations in Iran

☐ Yes ☐ No

B.7.5. Financial Disclosures and Conflicts of Interest

☐ Yes ☐ No

B.7.6. Taxpayer Identification Number

☐ Yes ☐ No

B.8 PACKET 3 – FORMS B

☐ Yes ☐ No

B.8.1. Illinois Procurement Gateway Registration # with expiration date

☐ Yes ☐ No

B.8.2. Certifications Timely to this Solicitation

B.8.3. Disclosure of Lobbyists and Contracts

B.9 CONTRACT SIGNATURE

Bidder has signed and filled out all Vendor information on the CONTRACT SIGNATURES page.

☐ Yes ☐ No

B.10 SUBCONTRACTING

Bidder has indicated if subcontractors will be used and provided all requested information.

☐ Yes ☐ No ☐ N/A

B. 11 LOCATION OF PERFORMANCE

Bidder has provided the location and known or anticipated value of services to be performed.

☐ Yes ☐ No

B.12 REFERENCES

Bidder has enclosed references and all pertinent contact information for the references.

☐ Yes ☐ No ☒ N/A

B.13 PRICING

Bidder has completed the PRICING part of the CONTRACT.

☐ Yes ☐ No

B.14 EXCEPTIONS

In preparing the Bid, Bidder has taken (check one box below):

☐ No Exceptions

☐ Exceptions to the System's language or requirements; Exceptions must be provided on the System's form (Section B-1) or must be in a substantially similar format. The System discourages taking exceptions. State law shall not be circumvented by the exception process. Exceptions may result in rejection of Bidder's Bid.

B.15 REQUEST FOR CONFIDENTIAL TREATMENT

Bidder has supplied an additional copy of the Bid with confidential information deleted. In the event the designation of confidentiality of this information is challenged, the undersigned hereby agrees to provide legal counsel or other necessary assistance to defend the designation of confidentiality and agrees to hold the State, System, Board of Trustees of the System, and employees of the System and State harmless for any costs or damages arising out of the System agreeing to withhold the materials based on Bidder's request.

☐ No, Bidder is not requesting confidential treatment for this Bid

☐ Yes, Bidder is seeking confidential treatment for portions of this Bid

B.16 PREFERENCES

The Illinois Procurement Code provides various preferences to promote business opportunities in Illinois. Does Bidder make any claims for preferences? If so, please mark the applicable preference(s) and include the list of items that qualify for the preference at the end of this section and a description of why the preference applies. The System reserves the right to determine whether the preference indicated applies to Bidder.

☐ Resident Bidder (30 ILCS 500/45-10)
☐ Recycled Supplies (30 ILCS 500/45-20)
☐ Recyclable Paper (30 ILCS 500/45-25)
☐ Environmentally Preferable Supplies or Services (30 ILCS 500/45-26)
☐ Illinois Correctional Industries (30 ILCS 500/45-30)
☐ Not-for-Profit Agencies for Persons with Significant Disabilities (30 ILCS 500/45-35)
☐ Gas Mileage (30 ILCS 500/45-40)
☐ Small Businesses (30 ILCS 500/45-45)
☐ Illinois Agricultural Products (30 ILCS 500/45-50)
☐ Corn-Based Plastics (30 ILCS 500/45-55)
☐ Vehicles Powered by Agricultural Commodity-Based Fuel (30 ILCS 500/45-60)
☐ Public Purchases in Other State (30 ILCS 520)
☐ Illinois Mined Coal Act (30 ILCS 555)
☐ Steel Products Procurement (30 ILCS 565)
☐ Veteran's Preference (330 ILCS 55)
☐ Business Enterprise for Minorities, Women, and Persons with Disabilities Act
☐ Procurement of Domestic Products (30 ILCS 517)
☐ Bio-based Products (30 ILCS 500/45-75)

Items that Qualify and Explanation: Click here to enter text

Signature of Authorized Representative: _____
Printed Name of Authorized Representative:_____
Bidder's Name: Click here to enter text
Date: Click here to enter a date.

EXCEPTIONS TO TERMS AND CONDITIONS

Click here to enter text agrees with the terms and conditions set forth in the System's Invitation for Bid, including the standard terms and conditions, the System supplemental provisions, certifications, and disclosures, with the following exceptions:

	Excluding certifications required by statute to be made by the Vendor, both Parties agree that all of the duties and obligations that the Vendor owes to the Agency for the work performed shall be pursuant to the solicitation and resulting contract, and Vendor's exceptions accepted by the System thereto as set forth below.
	STANDARD TERMS AND CONDITIONS
Section/ Subsection #	State the exception such as "add," "replace," and/or "delete."
	ADDITIONAL VENDOR TERMS AND CONDITIONS
New Provision(s), # et. seq.	**Section/Subsection New Number, Title of New Subsection**: State the new additional term or condition.

SERS hereby agrees to the exceptions provided by Click here to enter text and to the Additional Terms and Conditions provided by Click here to enter text.

Agreed: Click here to enter text	Agreed: Click here to enter text
By: Click here to enter text	By: Click here to enter text
Signed:	Signed:
Position: Click here to enter text	Position: Click here to enter text
Date: Click here to enter a date.	Date:

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS
CONTRACT

Nutanix™ Hardware, Licenses, and Services for Upgrades to System Data Centers

System Reference #: 21090

The Parties to this contract are the State Employees' Retirement System of Illinois ("System" or "SERS"), a retirement system established under the laws of the State of Illinois, and the Vendor. This contract, consisting of the signature page and numbered sections listed below and any attachments referenced in this contract, constitute the entire contract between the Parties concerning the subject matter of the contract, and in signing the contract, the Vendor affirms that the Certifications and Financial Disclosures and Conflicts of Interest attached hereto are true and accurate as of the date of the Vendor's execution of the contract. This contract supersedes all prior proposals, contracts and understandings between the Parties concerning the subject matter of the contract. This contract can be signed in multiple counterparts upon agreement of the Parties.

Contract includes BidBuy Purchase Order? (The Agency answers this question prior to contract filing.)

☐ Yes

☒ No

Contract uses Illinois Procurement Gateway Certifications and Disclosures?

☐ Yes (IPG Certifications and Disclosures including FORMS B)

☐ No

1. **DESCRIPTION OF SUPPLIES AND SERVICES**
2. **PRICING**
3. **TERM AND TERMINATION**
4. **STANDARD BUSINESS TERMS AND CONDITIONS**
5. **SUPPLEMENTAL DIVERSITY CERTIFICATION**
6. **FINANCIAL DISCLOSURES AND CONFLICTS OF INTEREST**
7. **CONTRACT SPECIFIC CERTIFICATIONS AND DISCLOSURES – "FORMS B" (IF APPLICABLE)**

In consideration of the mutual covenants and agreements contained in this contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein and have caused this contract to be executed by their duly authorized representatives on the dates shown on the following CONTRACT SIGNATURES page.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS
CONTRACT

Nutanix™ Hardware, Licenses, and Services for Upgrades to System Data Centers

System Reference #: 21090

VENDOR

Vendor Name: Click here to enter text.	Address (City/State/Zip): Click here to enter text.
Signature:	Phone: Click here to enter text.
Printed Name: Click here to enter text.	Fax: Click here to enter text.
Title: Click here to enter text.	Email: Click here to enter text.
Date:	

STATE OF ILLINOIS

State Employees' Retirement System of Illinois	Phone: (217) 524-0390
2101 S. Veterans Parkway	Fax: (217) 524-9039
Springfield, IL 62702	
Official Signature:	Date:
Printed Name: Timothy B. Blair	
Official's Title: Executive Secretary	
Legal Signature:	Date:
Legal Printed Name: James D. Stivers	
Legal's Title: General Counsel	
Fiscal Signature:	Date:
Fiscal's Printed Name: Alan T. Fowler	
Fiscal's Title: Chief Financial Officer	

SYSTEM USE ONLY **NOT PART OF CONTRACTUAL PROVISIONS**

- System Reference #: 21090
- Project Title:
- Contract #:
- Procurement Method (IFB, RFP, Small Purchase, etc.):
- BidBuy / Bulletin Reference #:
- BidBuy / Bulletin Publication Date:
- Award Code:
- Subcontractor Utilization? ☐ Yes ☐No Subcontractor Disclosure? ☐ Yes ☐No
- Funding Source:
- Obligation #:
- Small Business Set-Aside? ☐ Yes ☐No Percentage:
- Minority Owned Business? ☐ Yes ☐No Percentage:
- Women Owned Business? ☐ Yes ☐No Percentage:
- Persons with Disabilities Owned Business? ☐ Yes ☐No Percentage:
- Other Preferences?

1. DESCRIPTION OF SUPPLIES AND SERVICES

1.1. GOAL: The goal of this contract is for the System to secure the goods and services described below in order to upgrade the existing Nutanix™ Hyper-Converged Infrastructure (HCI) components at its data centers in Springfield, Illinois, and Oak Brook, Illinois.

1.2. SUPPLIES AND/OR SERVICES REQUIRED:

A. **Nutanix™ Hardware and Associated Software**

In accordance with delivery instructions and specifications provided by the System and by no later than June 30, 2021, Vendor shall provide to the System the following Nutanix™ products in the quantities described below:

Product Code	Quantity
NX-8235-G7-4215R-CM	4
C-MEM-64GB-3200-CM	96
C-HDD-NONE-CM	4
C-SSD-3.84TB-A5-A-CM	48
C-NIC-10GSFP2-A-CM	8

The products described in this Paragraph A include without limitation: (1) the Nutanix™ Hardware Platform (NX-8235-G7, 2 Node) with a Hypervisor Agnostic Installer Foundation, VM Controller, Prism Management, and Starter License Entitlement; (2) 64 GB Memory Module (3200MHz DDR4 RDIMM); (3) No HDD; (4) 3.84 TB 3.5" SSD; and (5) 10GbE, 2-port, SFP+ Network Adapter (Intel 82599ES).

B. **Nutanix™ Licenses**

In accordance with delivery instructions and specifications provided by the System and by no later than June 30, 2021, the Vendor shall provide to the System the following Nutanix™ products in the quantities described below, and it shall make those products available for the System's use for the term described below:

Product Code	Quantity	Term (Months)
SW-AOS-PRO-PRD-3YR*	1	36
L-CORES-PRO-PRD-3YR*	128	36
L-FLASHTiB-PRO-PRD-3YR*	168	36
LIC-PRS-PRO-3YR-1	8	36
LIC-FLOW-3YR-1	8	36

The terms of the Acropolis, Prism Pro, and Flow licenses described in this Paragraph B commence upon the date of software activation and run for 36 consecutive months thereafter. The products marked with an asterisk (*) above also include production support software service for the described term, beginning on the date of product activation. For SW-AOS-PRO-PRD-3YR, full production support software service is to be provided for the term specified. For

L-CORES-PRO-PRD-3YR, production software support service shall be for 1 CPU core for the term specified. For L-FLASHTiB-PRO-PRD-3YR, production software support service shall be for 1 TiB of flash for the term specified.

C. Nutanix™ Installation Services

In accordance with delivery instructions and specifications provided by the System and by no later than July 31, 2021, Vendor shall provide to the System the following Nutanix™ installation services for the quantity of nodes described below:

Product Code	Quantity
CNS-INSF-A-SVC-DEP-STR	8

For the services described in this Paragraph C, the selected region for the CNS RES resource is the United States, and the Hypervisor to be deployed during installation is AHV. The installation services described above include the deployment of the specified quantity of nodes at the "Starter Service" level as described in the "Nutanix Hyper-Converged Infrastructure: Cluster Deployment Service" datasheet (release 08.20/1.0).

D. Nutanix™ Training Services

On the last date that the installation services described in Paragraph C are completed, Vendor shall provide to the System the quantity of Nutanix™ Services Pre-Paid Credit Units described below, which shall be available for use by the System for a period of 12 consecutive months after that date:

Product Code	Quantity	Term (Months)
FLEX-CST-CR	150	12

E. Nutanix™ Support Services

Beginning on the last date that the installation services described in Paragraph C are completed and for a period of 36 consecutive months thereafter, Vendor shall provide to the System, upon request, the following Nutanix™ support services:

Product Code	Quantity	Term (Months)
S-HW-PRD	8	36
Support-Term	36	36

The support services described in this Paragraph E include without limitation 24/7 Production Level HW Support for Nutanix™ HCI appliance for the term specified.

Time is of the essence with respect to Vendor's performance of this contract. Vendor guarantees and warrants that all of the products described in Paragraph A of this Section and all of the products described in Paragraph B of this Section will be operating to the satisfaction of the System at the System's data centers in Springfield, Illinois, and Oak Brook, Illinois, by no later than July 31, 2021.

1.3 **MILESTONES AND DELIVERABLES:** Vendor must provide the specified quantities of the Nutanix™ products described in Paragraphs A and B of Section 1.2 to the System by no later than June 30, 2021. Vendor must provide the Nutanix™ installation services described in Paragraph C of Section 1.2 to the System by no later than July 31, 2021. Vendor shall ensure that all of the hardware described in Paragraph A of this Section and all of the products described in Paragraph B are operating to the satisfaction of the System at the System's data centers in Springfield, Illinois, and Oak Brook, Illinois, by no later than July 31, 2021. Vendor shall provide the Nutanix™ training services described in Paragraph D of Section 1.2, beginning on the last date that the installation services described in Paragraph C of Section 1.2 are completed and those credits shall be available for the System's use for a period of 12 consecutive months thereafter. Vendor shall provide the Nutanix™ support services described in Paragraph E of Section 1.2 to the System, beginning on the last date that the installation services described in Paragraph C of Section 1.2 are completed and for a period of 36 consecutive months thereafter.

1.4. **VENDOR / STAFF SPECIFICATIONS:** Vendor's employees who provide services under this contract shall be skilled in the tasks to which they are assigned, shall comply with the System's data security policies and instructions, and shall act appropriately and professionally at all times. Vendor assumes all liability for damage or loss resulting from the wrongful acts or negligence of its employees and agents while they are on System property or performing services under this contract. Vendor is also solely liable for any injuries that occur to its employees or agents while they are on System property or performing services under this contract.

1.5 **TRANSPORTATION AND DELIVERY:** Products and services shall be delivered in accordance with instructions provided by the System. Hardware shall be delivered to the System's main administrative office at 2101 S. Veterans Parkway, Springfield, Illinois, and software and services shall be provided remotely.

1.6 **SUBCONTRACTING**

Subcontractors are allowed.

1.6.1 Will subcontractors be utilized? ☐ Yes ☐ No

A subcontractor is a person or entity that enters into a contractual agreement with the Vendor to provide goods or services described in this contract.

Please identify below subcontracts that will be utilized in the performance of the contract, the names and addresses of the subcontractors, and a description of the work to be performed by each.

- Subcontractor Name: Click here to enter text

  Amount to Be Paid: Click here to enter text

  Address: Click here to enter text

Description of Work: Click here to enter text

- Subcontractor Name: Click here to enter text

  Amount to Be Paid: Click here to enter text

  Address: Click here to enter text

  Description of Work: Click here to enter text

  If additional space is necessary to provide subcontractor information, please attach an additional page.

1.6.2 All contracts with the subcontractors identified above must include the Standard Certifications completed and signed by the subcontractor, and the Vendor must provide copies of those certifications to the System.

1.6.3 If the annual value of any the subcontracts is more than $50,000, then the Vendor must provide to the System the Financial Disclosures and Conflicts of Interest for that subcontractor.

1.6.4 If at any time during the term of the Contract, Vendor adds or changes any subcontractors, Vendor is required to promptly notify, in writing, the System's Director of Administrative Services, Mr. Robert Cooper (robert.cooper@srs.illinois.gov) of the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to this Contract. Any subcontracts entered into prior to award of this Contract are done at the sole risk of the Vendor and subcontractor(s).

1.7 SUCCESSOR VENDOR

☐ Yes ☒ No This contract is for services subject to 30 ILCS 500/25-80. Heating and air conditioning service contracts, plumbing service contracts, and electrical service contracts are not subject to this requirement. Non-service contracts, construction contracts, qualification-based selection contracts, and professional and artistic services contracts are not subject to this requirement.

If yes is checked, then the Vendor certifies:

(i) that it shall offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and

(ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract.

1.8 WHERE SERVICES ARE TO BE PERFORMED: Unless otherwise disclosed in this section all services shall be performed in the United States. If the Vendor performs the services purchased hereunder in another country in violation of this provision, such action may be deemed by the State as a breach of the contract by Vendor.

A) Vendor shall disclose the locations where the services required shall be performed and the known or anticipated value of the services to be performed at each location. If the Vendor received additional consideration in the evaluation based on work being performed in the United States, it shall be a breach of contract if the Vendor shifts any such work outside the United States.

- Location where services will be performed: Click here to enter text

  Value of services performed at this location: Click here to enter text

- Location where services will be performed: Click here to enter text

  Value of services performed at this location: Click here to enter text

II. PRICING

2.1 FORMAT OF PRICING:

2.1.1 Vendor shall submit pricing in the format shown below, based on the terms and conditions of this Contract.

2.1.2 Pricing shall be submitted as a fixed fee proposal to provide the Nutanix™ products and services described in Section 1.2.

2.2 TYPE OF PRICING: The Illinois Office of the Comptroller requires the System to indicate whether the contract price is firm or estimated at the time it is submitted for obligation. The total price of this contract is firm.

2.3 EXPENSES ALLOWED: Expenses are not allowed.

2.4 DISCOUNT: The System may receive a Click here to enter text % discount for payment within Click here to enter text days of receipt of correct invoice. This discount will not be a factor in making the award.

2.5 VENDOR'S PRICING: Attach additional pages if necessary or if the format of pricing specified above in Section 2.1 requires additional pages.

2.5.1. Vendor's Price for the Initial Term: Click here to enter text

2.5.2. Renewal Compensation: Contract is not subject to renewal.

2.6 MAXIMUM AMOUNT: The total payments under this contract shall not exceed the price described in Section 2.5.1 without a formal amendment.

III. TERM AND TERMINATION

3.1 TERM OF THIS CONTRACT: This contract shall commence upon the last dated signature of the Parties and shall end on July 31, 2024.

3.1.1 In no event will the total term of the contract extend beyond July 31, 2024.

3.1.2 Vendor shall not commence billable work in furtherance of the contract prior to final execution of the contract except when permitted pursuant to 30 ILCS 500/20-80.

3.2 RENEWAL: This contract is not subject to renewal.

3.3 TERMINATION FOR CAUSE: The System may terminate this contract, in whole or in part, immediately upon notice to the Vendor if: (a) the System determines that the actions or inactions of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause, jeopardy to health, safety, or property; (b) the Vendor has notified the System that it is unable or unwilling to perform the contract; or (c) the Vendor provides false information in any of its certifications in this contract or fails to remain in compliance with any of those certifications.

If Vendor fails to perform to the System's satisfaction any material requirement of this contract, if the Vendor is in violation of a material provision of this contract, or if the System determines that the Vendor lacks the financial resources to perform the contract, the System shall provide written notice to the Vendor to cure the problem identified within the period of time specified in the System's written notice. If not cured by that date the System may either: (a) immediately terminate the contract without additional written notice or (b) enforce the terms and conditions of the contract.

For termination due to any of the causes contained in this Section, the System retains its rights to seek any available legal or equitable remedies and damages.

3.4 TERMINATION FOR CONVENIENCE: The System may, for its convenience and with thirty (30) days prior written notice to Vendor, terminate this contract in whole or in part and without payment of any penalty or incurring any further obligation to the Vendor.

Upon submission of invoices and proof of claim, the Vendor shall be entitled to compensation for supplies and services provided in compliance with this contract up to and including the date of termination.

3.5 AVAILABILITY OF FUNDING: This contract is contingent upon and subject to the availability of funds. The System, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if (1) the Board of Trustees of the System fails to provide in its annual budget funds sufficient to pay such obligation, if funds are not appropriated by the General Assembly, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the System's funding is decreased in any way, or (3) the System determines, in its sole discretion or as directed by the Board of Trustees or Office of the Governor, that a reduction is

necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.

IV. STANDARD BUSINESS TERMS AND CONDITIONS

4.1 PAYMENT TERMS AND CONDITIONS:

4.1.1 Late Payment: Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 III. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State or System. Payment terms contained in Vendor's invoices shall have no force or effect.

4.1.2 Minority Contractor Initiative: Any Vendor awarded a contract of $1,000 or more under Section 20-10, 20-15, 20-25 or 20-30 of the Illinois Procurement Code (30 ILCS 500) is required to pay a fee of $15. The Comptroller shall deduct the fee from the first check issued to the Vendor under the contract and deposit the fee in the Comptroller's Administrative Fund. 15 ILCS 405/23.9.

4.1.3 Expenses: The System will not pay for supplies provided or services rendered, including related expenses, incurred prior to the execution of this contract by the Parties even if the effective date of the contract is prior to execution.

4.1.4 Prevailing Wage: As a condition of receiving payment Vendor must (i) be in compliance with the contract, (ii) pay its employees prevailing wages when required by law, (iii) pay its suppliers and subcontractors according to the terms of their respective contracts, and (iv) provide lien waivers to the State and System upon request. Examples of prevailing wage categories include public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services. The prevailing wages are revised by the Illinois Department of Labor (DOL) and are available on DOL's official website, which shall be deemed proper notification of any rate changes under this subsection. Vendor is responsible for contacting DOL at 217-782-6206 or (*http://www.state.il.us/agency/idol/index.htm*) to ensure understanding of prevailing wage requirements.

4.1.5 Federal Funding: This contract may be partially or totally funded with Federal funds. If Federal funds are expected to be used, then the percentage of the good/service paid using Federal funds and the total Federal funds expected to be used will be provided to the awarded Vendor in the notice of intent to award.

4.1.5.1 Invoicing: By submitting an invoice, Vendor certifies that the supplies and services provided meet all of the requirements of this contract and that the amount billed and expenses incurred are as allowed in this contract. Vendor may invoice the System for a product or service to be provided under this contract on or after the date the product or service is provided to the System and before July 31, 2021, or by no later than July 31, 2021, in the case of services to be provided under the contract on or after that date. If the vendor does not invoice the System by July 31, 2021, for goods under this contract, it may have to seek payment through the Illinois Court of Claims. 30 ILCS 105/25.

All invoices are subject to statutory offset. 30 ILCS 210. Vendor shall not bill for any taxes unless accompanied by proof that the System is subject to the tax. If necessary, Vendor may request the applicable Agency's Illinois tax exemption number and Federal tax exemption information. Send invoices to:

State Employees' Retirement System of Illinois
Attn: Mr. Robert Cooper
P.O. Box 19255
2101 S. Veterans Parkway
Springfield, IL 62794-9255

4.2 **ASSIGNMENT**: This contract may not be assigned or transferred in whole or in part by Vendor without the prior written consent of the System.

4.3 **SUBCONTRACTING:** For purposes of this section, subcontractors are those specifically hired to perform all or part of the work covered by this contract. Vendor must receive prior written approval before use of any subcontractors in the performance of this contract. Vendor shall describe, in an attachment if not already provided, the names and addresses of all authorized subcontractors to be utilized by Vendor in the performance of this contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this contract. If required, Vendor shall provide a copy of any subcontracts within fifteen (15) days after execution of this contract. All subcontracts must include the same certifications that Vendor must make as a condition of this contract. Vendor shall include in each subcontract the subcontractor certifications as shown on the Standard Certification form available from the State. If at any time during the term of the Contract, Vendor adds or changes any subcontractors, then Vendor must promptly notify, by written amendment to the Contract, the System's Director of Administrative Services, Mr. Robert Cooper (Robert.cooper@srs.illinois.gov) of the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to the Contract. 30 ILCS 500/20-120.

4.4 **AUDIT/RETENTION OF RECORDS:** Vendor and its subcontractors shall maintain books and records relating to the performance of this contract and any subcontract necessary to support amounts charged to the System pursuant this contract or subcontract. Books and records, including, but not limited to, information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three (3) years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three (3) years from the later of final payment under the term or completion of the subcontract. If Federal funds are used to pay contract costs, the Vendor and its subcontractors must retain their respective records for five (5) years. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, other governmental entities with monitoring authority, and the System or its designees upon reasonable notice and during normal business hours. Vendor and its

subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the System for the recovery of any funds paid by the System under this contract or any subcontract for which adequate books and records are not available to support the purported disbursement. The Vendor and subcontractors shall not impose a charge for audit or examination of the Vendor's or subcontractor's books and records. 30 ILCS 500/20-65.

4.5 **TIME IS OF THE ESSENCE:** Time is of the essence with respect to Vendor's performance of this contract. Vendor shall continue to perform its obligations while any dispute concerning this contract is being resolved unless otherwise directed by the System.

4.6 **NO WAIVER OF RIGHTS:** Except as specifically waived in writing, failure by a Party to exercise or enforce a right does not waive that Party's right to exercise or enforce that or other rights in the future.

4.7 **FORCE MAJEURE:** Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence, including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring Party may cancel this contract without penalty if performance does not resume within thirty (30) days of the declaration.

4.8 **CONFIDENTIAL INFORMATION:** Each Party to this contract, including its agents and subcontractors, may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this contract. Vendor shall presume all information received from the System or to which it gains access pursuant to this contract is confidential. Vendor information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act, shall be considered public. No confidential data collected, maintained, or used in the course of performance of this contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of this contract or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of this contract, in whatever form it is maintained, promptly at the end of this contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third Party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or that is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

4.9 **USE AND OWNERSHIP:** All work performed or supplies created by Vendor under this contract, whether written documents or data, goods or deliverables of any kind, shall be deemed work for hire under copyright law and all intellectual property and other laws, and the System is granted sole and exclusive ownership to all such work, unless

otherwise agreed in writing. Vendor hereby assigns to the System all right, title, and interest in and to such work including any related intellectual property rights, and/or waives any and all claims that Vendor may have to such work including any so-called moral rights" in connection with the work. Vendor acknowledges the System may use the work product for any purpose. Confidential data or information contained in such work shall be subject to the confidentiality provisions of this contract.

4.10 INDEMNIFICATION AND LIABILITY: The Vendor shall indemnify and hold harmless the System, its board members, trustees, officers, agents, employees, and volunteers, in both individual and official capacities, as well as the State of Illinois, its agencies, officers, employees, agents and volunteers, from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of: (a) any breach or violation by Vendor or its subcontractors of any of its certifications, representations, warranties, covenants or agreements; (b) any actual or alleged death or injury to any person, damage to any real or personal property, or any other damage or loss claimed to result in whole or in part from Vendor or subcontractor's negligent performance; (c) any act, activity or omission of Vendor or any of its subcontractors, employees, representatives, or agents; or (d) any actual or alleged claim that the services or goods provided under this contract infringe, misappropriate, or otherwise violate any intellectual property (patent, copyright, trade secret, or trademark) rights of a third party. In accordance with Article VIII, Section 1(a),(b) of the Constitution of the State of Illinois and 1973 Illinois Attorney General Opinion 78, neither the System nor the State may indemnify private parties absent express statutory authority permitting the indemnification. Neither Party shall be liable for incidental, special, consequential, or punitive damages.

4.11 INSURANCE: Vendor shall, at all times during the term of this contract and any renewals or extensions, maintain and provide a Certificate of Insurance naming the System as an additionally insured for all required bonds and insurance. Certificates may not be modified or canceled until at least thirty (30) days' notice has been provided to the System. Vendor shall provide: (a) General Commercial Liability insurance in the amount of $1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and $2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto (Combined Single Limit Bodily Injury and Property Damage), in amount of $1,000,000 per occurrence; and (c) Worker's Compensation Insurance in the amount required by law. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims.

4.12 INDEPENDENT CONTRACTOR: Vendor shall act as an independent contractor and not an agent or employee of, or joint venturer with the State or System. All payments by the State or System shall be made on that basis.

4.13 SOLICITATION AND EMPLOYMENT: Vendor shall not employ any person employed by the System or State during the term of this contract to perform any work under this contract. Vendor shall give notice immediately to the Agency's director if Vendor solicits or intends to solicit System or State employees to perform any work under this contract.

4.14 COMPLIANCE WITH THE LAW: The Vendor, its employees, agents, and subcontractors shall comply with all applicable Federal, State, and local laws, rules, ordinances, regulations, orders, System policies, Federal circulars and all license and permit requirements in the performance of this contract. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes. Vendor shall obtain at its own expense, all licenses and permissions necessary for the performance of this contract.

4.15 BACKGROUND CHECK: Whenever the System deems it reasonably necessary for security reasons, the System may conduct, at its expense, criminal and driver history background checks of Vendor's and subcontractor's officers, employees or agents. Vendor or subcontractor shall immediately reassign any individual who, in the opinion of the System, does not pass the background check.

4.16 APPLICABLE LAW:

4.16.1 **PREVAILING LAW:** This contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois.

4.16.2 **EQUAL OPPORTUNITY:** The Department of Human Rights' Equal Opportunity requirements are incorporated by reference. 44 Ill. Adm. Code 750.

4.16.3 **COURT OF CLAIMS; ARBITRATION; SOVEREIGN IMMUNITY:** Any claim against the System arising out of this contract must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. The System shall not enter into binding arbitration to resolve any dispute arising out of this contract. The System does not waive sovereign immunity by entering into this contract.

4.16.4 **OFFICIAL TEXT:** The official text of the statutes cited herein is incorporated by reference. An unofficial version can be viewed at (*www.ilga.gov/legislation/ilcs/ilcs.asp*).

4.17 ANTI-TRUST ASSIGNMENT: If Vendor does not pursue any claim or cause of action it has arising under Federal or State antitrust laws relating to the subject matter of this contract, then upon request of the Illinois Attorney General, Vendor shall assign to the System all of Vendor's rights, title and interest to the claim or cause of action.

4.18 CONTRACTUAL AUTHORITY: The System shall be the only State entity responsible for performance and payment under this contract. When System staff sign in addition to the System, they do so as approving officers and shall have no liability to Vendor.

4.19 EXPATRIATED ENTITIES: Except in limited circumstances, no business or member of a unitary business group, as defined in the Illinois Income Tax Act, shall submit a bid for or enter into a contract with the System or a State agency if that business or any member of the unitary business group is an expatriated entity.

4.20 NOTICES: Notices and other communications provided for herein shall be given in writing via electronic mail whenever possible. If transmission via electronic mail is not possible, then notices and other communications shall be given in writing via registered

or certified mail with return receipt requested, via receipted hand delivery, via courier (UPS, Federal Express or other similar and reliable carrier), or via facsimile showing the date and time of successful receipt. Notices shall be sent to the individuals who signed this contract using the contact information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change its contact information.

4.21 MODIFICATIONS AND SURVIVAL: Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination. In the event of a conflict between the System's and the Vendor's terms, conditions and attachments, the System's terms, conditions and attachments shall prevail.

4.22 PERFORMANCE RECORD / SUSPENSION: Upon request of the System, Vendor shall meet to discuss performance or provide contract performance updates to help ensure proper performance of this contract. The System may consider Vendor's performance under this contract and compliance with law and rule to determine whether to continue this contract, suspend Vendor from doing future business with the System for a specified period of time, or whether Vendor can be considered responsible on specific future contract opportunities.

4.23 FREEDOM OF INFORMATION ACT: This contract and all related public records maintained by, provided to, or required to be provided to the System are subject to the Illinois Freedom of Information Act (FOIA) notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.

4.24 SCHEDULE OF WORK: Any work performed on System or State premises shall be performed during the hours designated by the System and performed in a manner that does not interfere with the System and its personnel.

4.25 WARRANTIES FOR SUPPLIES AND SERVICES:

4.25.1. Vendor warrants that the products furnished under this contract will: (a) conform to the standards, specifications, drawing, samples or descriptions furnished by the System or furnished by the Vendor and agreed to by the System, including but not limited to all specifications attached as exhibits hereto; (b) be merchantable, of good quality and workmanship, and free from defects for a period of twelve months or longer if so specified in writing, and fit and sufficient for the intended use; (c) comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies; (d) be of good title and be free and clear of all liens and encumbrances and; (e) not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the System for any losses, costs, damages or expenses, including without

limitations, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties.

4.25.2. Vendor shall ensure that all manufacturers' warranties are transferred to the System and shall provide to the System copies of such warranties. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the System's payment, acceptance, inspection or failure to inspect the supplies.

4.25.3. Vendor warrants that all services will be performed to meet the requirements of this contract in an efficient and effective manner by trained and competent personnel. Vendor shall monitor performances of each individual and shall immediately reassign any individual who does not perform in accordance with this contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the contract or System policies.

4.26 REPORTING, STATUS AND MONITORING SPECIFICATIONS: Vendor shall immediately notify the System of any event that may have a material impact on Vendor's ability to perform this contract.

4.27 EMPLOYMENT TAX CREDIT: Vendors who hire qualified veterans and certain ex-offenders may be eligible for tax credits. 35 ILCS 5/216, 5/217. Please contact the Illinois Department of Revenue (telephone #: 217-524-4772) for information about tax credits.

5. SUPPLEMENTAL DIVERSITY CERTIFICATION

Vendor acknowledges and agrees that compliance with this section in its entirety for the term of the contract and any renewals is also a material requirement and condition of this contract. By executing this contract, Vendor certifies compliance with this supplemental diversity certification in its entirety and is under a continuing obligation to remain in compliance and report any non-compliance. If this contract extends over multiple fiscal years, Vendor shall confirm compliance with this section in the manner and format determined by the System by the date specified by the System and in no event later than July 1 of each year that this contract remains in effect. If the Parties determine that any certification in this section is not applicable to this contract, it may be stricken without affecting the remaining provisions. Vendor certifies that it is not legally prohibited from contracting with the System or the State of Illinois, has no known conflicts of interest, and further specifically certifies as follows:

5.1 As part of each certification, Vendor acknowledges and agrees that should Vendor provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:

- the contract may be void by operation of law,
- the System or the State of Illinois may void the contract, and
- the Vendor may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

5.2 Vendor acknowledges that the System has established an aspirational goal to use businesses owned by minorities, women, and persons with disabilities for not less than the percentage specified in paragraph (10) of Section 1-109.1 of the Illinois Pension Code for all contracts awarded and purchases made by the System. Vendor hereby certifies that:

☐ Vendor is a minority-owned business, woman-owned business, or business owned by a person with disability, as those terms are defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/2), which is available online at: https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=003005750K2. Indicate type of business below:

☐ minority-owned business;
☐ woman-owned business; or
☐ business owned by a person with disability.

☐ Vendor is not a minority-owned business, woman-owned business, or business owned by a person with disability, as those terms are defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575/2), which is available online at: https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=003005750K2.

Signature of Authorized Representative: _____

Printed Name of Authorized Representative:_____

Bidder's Name: Click here to enter text

Date: Click here to enter a date.